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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/749,628	12/30/2003	Brian Alan Grove	2043.100US1	9864
49845	7590	01/10/2008	EXAMINER	
SCHWEGMAN, LUNDBERG & WOESSNER/EBAY			HAQ, NAEEM U	
P.O. BOX 2938			ART UNIT	PAPER NUMBER
MINNEAPOLIS, MN 55402			3625	
			NOTIFICATION DATE	DELIVERY MODE
			01/10/2008	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

USPTO@SLWIP.COM

Office Action Summary

Application No.

10/749,628

Applicant(s)

GROVE ET AL.

Examiner

Naeem Haq

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-28 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10/15/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 1, 3, 4, 7, 8, 10, 11, 14, 15, 17, 18, 21, 22, 24, 25, and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Xie et al. (US 7,006,987 B1) ("Xie").

Referring to claims 1, 7, 8, 14, 15, 21, 22 and 28: Xie teaches a network-based system including: a processor coupled to a memory through a bus; and a fixed price-setting process executed from the memory by the processor to cause the processor to facilitate the operation of a network-based auction price setting process for a listing of an item, to provide a fixed price offer for the item and to publish the fixed-price offer on the listing based on a criteria (col. 4, line 64 – col. 5, line 5; Figure 1, "S116").

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Referring to claims 3, 10, 17, and 24: Xie teaches that the fixed-price offer is lower than a high proxy bid (claim 1).

Referring to claims 4, 11, 18, and 25: Xie teaches that the fixed-price-setting process further causes the processor to automatically designate a buyer associated with the high proxy bid as the winner of the auctioned item (col. 2, lines 3-11; col. 2, lines 46-53).

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, 8, 9, 16, 14, 15, 21, 22, 23, and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Fisher et al. (US 6,243,691 B1) (“Fisher”).

Referring to claims 1, 7, 8, 14, 15, 21, 22 and 28: Fisher teaches a network-based system including: a processor coupled to a memory through a bus; and a fixed price-setting process executed from the memory by the processor to cause the processor to facilitate the operation of a network-based auction price setting process for a listing of an item, to provide a fixed price offer for the item and to publish the fixed-price offer on the listing based on a criteria (Figure 2, see “List Price”).

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Referring to claims 2, 9, 16, and 23: Fisher teaches that the fixed-price offer is higher than a current highest bid (Figure 2, see "The current high bidders are:").

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 6, 12, 13, 19, 20, 26, and 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Xie et al. (US 7,006,987 B1) ("Xie") in view of Fisher et al. (US 6,243,691 B1) ("Fisher").

Referring to claims 5, 6, 12, 13, 19, 20, 26, and 27: Xie does not teach that the automatic designation is performed when the buyer has opted into being designated the winner automatically. However, Fisher teaches that the automatic designation is performed when the buyer has opted into being designated the winner automatically (col. 6, lines 15-43). Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Fisher into the invention of Xie. One of ordinary skill in the art would have been motivated to do so in order to send a notification to the bidder, as taught by Fisher.

Response to Arguments

Applicants' arguments have been fully considered but they are not persuasive. The Applicants have argued that Xie teaches a "proxy bid" and not a "fixed price" (see Remarks pages 8 and 9). The examiner respectfully disagrees and notes that a "proxy bid" is nothing more than a fixed upper limit a bidder is willing to offer for an item. This fixed upper limit is a maximum price a bidder is willing to offer. Thus the "proxy bid" is a fixed maximum price offered by a bidder and therefore is a "fixed price".

The Applicants have also argued that Fisher fails to anticipate the claimed invention because Fisher is directed to a catalog page that contains a "List Price". (see Remarks page 11). The examiner respectfully disagrees. Fisher is directed to an online auction that displays a "fixed price" for an item. Thus, Fisher teaches more than just a catalog page.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on (571)-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 4, 2008



NAEEM HAQ
PRIMARY EXAMINER